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proaching such a track would apprehend danger or would feel assured of his safety under the circumstances, was for the jury.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1166.* 4 Va.-W. Va. Enc. Dig. 140, 143.]

5. Railroad (§ 337 (1)*)—Injuries at Crossing—Negligence—Facts and Circumstances.—In an action against a railroad for injuries at a crossing where the rails were rusty and level with the highway, vegetation was growing, and there was no signal board, as required by statute, whether the negligence of the road was the proximate cause of the injury was to be determined from all the facts and circumstances of the case.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1090, 1093.* 4 Va.-W. Va. Enc. Dig. 130, 143.]

6. Appeal and Error (§ 1067*)—Harmless Error—Instruction.—In an action against a railroad for injuries at its crossing, it being inconceivable that the competent attorneys who argued the case left the jury in any doubt as to the burden of proof, the court certifying that the case was argued by the opposing attorneys upon proper assumptions as to the burden of proof, the court's inadvertent failure to read defendant's requested instruction on the burden of proof was harmless to defendant.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4229; Trial, Cent. Dig. § 475.* 1 Va.-W. Va. Enc. Dig. 604.]

Error to Circuit Court, Nansemond County.

Action by Luther M. Church against the Atlantic Coast Line Railroad Company. To review a judgment for plaintiff, defendant brings error. Affirmed.

Wm. B. McIlwaine and *Bernard Mann*, both of Petersburg, for plaintiff in error.

Mann & Tyler, of Norfolk, for defendant in error.

WATKINS, Treasurer, et al. *v.* BARROW et al.

June 14, 1917.

[92 S. E. 908.]

Taxation (§ 44*)—Uniformity—Road Tax.—Code 1914, § 944a, cl. 11, as amended by Laws 1915, c. 86, exempting property within any town which maintains its own streets from the payment of a county road tax, is not in violation of Const. 1902, § 168 (Code 1904, p. cclxii), providing that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority of levying taxes,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

since a road tax is not levied for general county purposes, but is required to be spent in certain defined localities of the county.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 87.]

Appeal from Circuit Court, Prince Edward County.

Bill by H. E. Barrow and others, taxpayers of the town of Farmville, against S. W. Watkins and others, Treasurer and Board of Supervisors of the County of Prince Edward, to enjoin the collection of a tax. Decree in favor of complainants, and defendants appeal. Affirmed.

Meredith & Cocke and *S. A. Anderson*, all of Richmond, for appellants.

J. M. Crute and *E. Warren Wall*, both of Farmville, and *Hill Carter*, of Richmond, for appellees.

BARROW et al. v. PRINCE EDWARD COUNT et al.

June 14, 1917.

[92 S. E. 910.]

1. Taxation (§ 538*)—Voluntary Payment—Recovery—Bill in Equity.—A county road and poor tax illegally assessed, and voluntarily paid, cannot be recovered at common law.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 999, 1000.* 11 Va.-W. Va. Enc. Dig. 136; 13 Va.-W. Va. Enc. Dig. 119.]

2. Taxation (§ 543 (1)*)—Voluntary Payment—Recovery—Statutory Remedy.—Code 1904, §§ 567-571, provide a simple remedy at law by motion, whereby taxes erroneously assessed and collected may be recovered within two years from September 1st of the year in which the assessment is made, though voluntarily paid, so that a bill in equity will not lie.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. 1006.* 13 Va.-W. Va. Enc. Dig. 119.]

Appeal from Circuit Court, Prince Edward County.

Bill in equity by H. E. Barrow and others against the county of Prince Edward and others. Complainants appeal from a decree sustaining a demurrer to the bill. Affirmed.

E. Warren Wall, of Farmville, for appellants.

A. D. Watkins, of Farmville, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.